CLAIM REJECTIONS

Claims 33 - 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Leal (U.S. Patent 5,199,872).

Claims 37, 38 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leal (U.S. Patent 5,199,872) in view of Diaz (U.S. Patent 4,041,937).

Summary:

This response shows that the Examiner's determination of equivalence between the Leal device and Applicant's cheek pouch anchor as claimed is both factually and legally in error. Applicant provides a summary of the errors and then a detailed explanation of each error:

Error A. The Examiner is factually misstating both the structure of the Leal device and the manner in which the Leal device operates, contrary to the objective disclosures by Leal. The Examiner incorrectly asserts that a patient could bring the biting surfaces of a patient's teeth to bear on Leal's tabs 32 and 34 so as to compress Leal's U-shaped sections 12 and 14 towards each other. According Leal's specification and drawings, those tabs 32 and 34 actually will be positioned forward of a patient's front teeth, evidently projecting between the patient's lips to the exterior of the patient's mouth, where the patient's teeth cannot bear upon tabs 32 and 34 to compress U-shaped sections 12 and 14. Thus, the Examiner's assertion that a patient could compress the Leal device using a patient's teeth on tabs 32 and 34 is factually untrue, misstating both the structure and the function of the device disclosed by Leal.

Error B. The Examiner asserts incorrectly that Applicant's claims lack any reference to soft tissues of a patient's mouth. The Examiner fails to accord weight to explicit claim language in claims 33 and 39-43, that Applicant's cheek pouch anchor compresses "within a user's cheek pouch while a user's lips and jaws open and close". Applicant's claim language "user's cheek pouch" must be fairly and reasonably construed according to the explicit definition for that phrase in Specification paragraph [0041] and illustrated in Fig. 3. A "user's cheek pouch" by definition "lies between the inner wall of one of such user's two cheeks and the cheek-adjacent side of a such user's dental arches, gums and teeth" and thus by explicit definition includes the soft tissues of the user's cheek and gums. The *biting surfaces* of a patient's teeth are not part of a "user's cheek pouch" as specifically defined in Applicant's specification paragraphs [0040] and [0041]. Thus, the Examiner's

focus on the biting surfaces of a patient's teeth is factually irrelevant to Applicant's device as claimed. Even if a patient could bring teeth to bear to compress the Leal device (which a patient could not do as explained above), such a teeth-operated function of Leal would not be equivalent to the function, manner of operation and result of Applicant' anchor. Applicant's anchor is structured and claimed to be operable by the compressive power of a user's cheek pouch -- which by common knowledge is inherently lesser than the compressive power of the biting surfaces of a user's teeth. Conversely, Applicant's anchor is incapable of holding a patient's mouth open and preventing closure of the mouth, which is the primary function Leal discloses for his device. Thus, the functions of Applicant's claimed anchor and Leal's device plainly are not equivalent.

Error C. The Examiner improperly disregards Applicant's explicitly ***closed***, positive limitation on structure, "sized to fit within ***one of a user's cheek pouches***," stated in claims 41 - 43. This is a physical limitation on the size of Appellant's anchor that is independent of the particular location where the anchor might happen to be placed (or misplaced) within a user's mouth. The Examiner improperly demands a negative limitation in place of or in addition to the existing positive limitation.

Error D. In an attempt to impute to the Leal device adjustability equivalent to that which Applicant claims, the Examiner hypothesizes a motivation to bend the wire of Leal's device to accommodate a patient's over-bite or other affliction. Then, without articulating any intervening mechanics, the Examiner jumps to the erroneous conclusion that the hypothesized motivation would induce a modification of Leal's device to achieve the specific mechanism of adjustability that Applicant discloses and claims. The Examiner does not cite any publication or convention in the prior art either for his hypothesis or for his conclusion. This response shows in detail that the Examiner's conclusion does not follow from his hypothesized motivation. A motivation to accommodate a particular patient's over-bite is not equivalent to a motivation to adjust the span size of Leal's whole device 10 by making a converse adjustment of Leal's upper section 12 and lower section 14. A person of ordinary skill in the art with common sense that wanted to change the span size of Leal's whole device 10 would see that the obvious, simple, direct method is to change the radius of curvature of Leal's wire at resilient connection 24. A person of ordinary skill would have the common sense not to adjust the span size of Leal's whole device by a complex, converse adjustment of the span size of Leal's upper section 12 and

lower section 14, which thereby would threaten the fit in the patient's mouth by forcing a cascade of changes in the relative positions of Leal's resilient connection 24, tongue depressor 26, cotton clamps 38 and forward tabs 32 and 34. A motivation to bend Leal's device to accommodate a particular patient's deformity could lead to a wide variety of bending adjustments to Leal's device 10, other than the specific kind of adjustability claimed by Applicant. It would only be coincidental if such bending adjustments of Leal's device occasionally were to lead to ***converse*** adjustment of the span size of Leal's sections 12 and 14 that translated into adjustment of the span size of Leal's whole device 10. There is no art cited by the Examiner to show that, in the absence of Applicant's disclosure, a person of ordinary skill in the art having common sense would have recognized any such incidental adjustment of the span size of Leal's whole device to be valuable, rather than an unwanted side effect to be avoided or corrected.

Detailed Response.

The Examiner has not made out a prima facie case of equivalence between Leal's device and Applicant's device as claimed. MPEP 2183. Unless an element in prior art performs the identical function specified in Applicant's claim, that prior art cannot be an equivalent for the purposes of 35 U.S.C. 112, sixth paragraph. *MPEP 2184, II,* citing *Pennwalt Corp. v. Durand-Wayland, Inc. 833 F.2d 931, 4 USPQ2d 1737 (Fed. Cir. 1987), cert. denied, 484 U.S. 961 (1988)*. Because Leal lacks substantial equivalence to Applicant's claimed device, the combination of Leal with Diaz does not show obviousness.

Improper Disregard of Positive, Closed, Structural Limitation.

The Examiner incorrectly has disregarded Applicant's explicitly ***closed***, positive limitation "sized to fit within ***one of a user's cheek pouches***" in new claims 41 - 43. This is a positive physical limitation on structure that does not read on Leal. Leal cannot perform this function in the same manner to reach the same result as Applicant discloses and claims. The Examiner states,

> "However, claiming the device fits in one cheek pouch does not limit it to not be able to fit in the other check pouch, because there is no negative limitation preventing it from being within both cheek pouches."

By patentable distinction, the size and the three-dimensional shape of Leal's device render

it impossible for Leal's device to fit **within** only one of a user's cheek pouches. Leal, Figs. 1, 2, 4 and 5.

Applicant's claim limitation, "sized to fit within one of a user's cheek pouches," limits the structural size of Applicant's anchor regardless of where in a user's mouth the anchor might be placed by a user. One can envision that Applicant's anchor could be placed between a user's lips and front teeth, where it would fall across the boundary between cheek pouches, partially in one cheek pouch and partially in the other cheek pouch, but the structural size of Applicant's anchor as claimed still would be structurally size-limited so that the anchor always is capable of fitting within only one cheek pouch -- which Leal's device is structurally incapable of doing.

The Examiner is not free to disregard Applicant's explicit, positive, size limitation in claims 41-43, or to demand a negative limitation in place of or in addition to Applicant's explicit, positive limitation. Applicant here is following the recommended practice of positively claiming what the invention is, not negatively claiming what it is not. *Landis on Mechanics of Patent Claim Drafting, Fifth Ed., §3.5, Summary.* Addition of a negative limitation to the existing positive limitation would be inappropriately duplicative.

Leal's Device Is Not Equivalent to Applicant's Device and Claims; Factually Incorrect Statement of the Structure and Function of the Leal Device By Examiner.

The Examiner incorrectly states,

> "Moreover, the device [of Leal] would be able to be compressed by the user's jaw and teeth if it can be compresses by two finger that are weaker than the jaw of a person, wherein the teeth would fit into the spot where the two fingers compress the device." Office Action, Nov. 9, 2007, pp. 2 -3.

Applicant specifically traverses the Examiner's factual assertion that a user's "teeth would fit into the spot where the two fingers compress the [Leal] device." The Examiner literally is contradicting Leal's specification.

The Examiner cannot show how the Examiner's proposed mode of operation of Leal's device (compression of tabs 32 and 34 by the user's teeth and jaws) is even physically possible when Leal's device is inserted in the patient's mouth. This is because a patient's teeth and jaws do not bear upon tabs 32 and 34 when Leal's device is inserted between a user's gums and lips as Leal's specification describes.

Leal's specification describes his device as follows:

"...a frame including upper and lower generally U-shaped sections spaced in relation one to the other and generally conformal in shape to the spaces between the upper gum and lip and lower gum and lip, respectively, of the mouth of a human patient, ..." Leal, 2:62-66. "Secured to the front portions 16 and 18 of upper and lower sections 12 and 14, respectively, are a pair of ***forwardly projecting*** tabs 32 and 34..... The tabs 32 and 34 are U-shaped in configuration and generally bowed to accommodate the dentist's fingers, so that the tabs may be used to displace the upper and lower sections 12 and 14, respectively, toward and away from one another to facilitate insertion and removal of the appliance relative to the patient's mouth." Leal, 4:25-35.

Thus, Leal's U-shaped sections 12 and 14 are shaped to fit between the patient's gums and lips around the ***outside*** of the patient's dental arches, and therefore ***outside the patient's teeth***. Leal's tabs 32 and 34 project ***forwardly*** from U-shaped sections 12 and 14 and thus necessarily must lie forward of the patient's front teeth. Leal's tabs 32 and 34 evidently are designed to project between the patient's lips to the outside of the patient's mouth, where the dentist can place his fingers to compress the U-shaped sections 12 and 14 for insertion into and removal from the patient's mouth. See Leal's Figs. 1, 2, 4 and 5. Leal states:

"Once inserted, the pressure on tabs 32 and 34 may be slowly released to locate the upper and lower sections, respectively, between the patient's upper gum and lips on the one hand and the lower gum and lip on the other hand." Leal, 5:19-23.

Therefore, when the Leal device is positioned in the patient's mouth as described by Leal's specification, a patient cannot bring the biting surfaces of a patient's teeth to bear on Leal's tabs 32 to 34 and the patient cannot use the biting surfaces of patient's teeth to compress Leal's tabs 32 and 34.

Examiner Improperly Avoids The Obvious Difference Between Soft Tissue of the Cheek Pocket and the Hard Biting Surfaces of a Patient's Teeth By Refusing to Give Weight to Applicant's Claim Language As Explicitly Defined in Applicant's Specification.

The Examiner states,

"Further, Applicant argues that the Leal device cannot be compressed by the soft tissue of the mouth, however, this feature has not been claimed." Office Action, Nov. 9, 2007, p. 2.

First. It is the Examiner's burden to prove with valid prior art the Examiner's contention that the Leal device can be compressed by the soft tissues of a patient's mouth, contrary to statements in Leal's specifications that Leal's device maintains a patient's mouth open and prevents the mouth from closing. Applicant has no obligation to write into Applicant's claims an assertion that the Leal device cannot be compressed by the soft tissue of a patient's mouth.

Second. Contrary to the Examiner's assertion, Applicant's definitions for language used in the claims do implicate soft tissues of a user's mouth. Applicant affirmatively negates equivalence to Leal in claims 41 - 43 by explicitly claiming:

"said spring element flexibly compresses to allow a user's jaws and lips to fully close while said spring element is within one or more of a user's cheek pouches." [1]

Applicant's specification, paragraph [0041], states in material part:

" 'User's cheek pouch' lies between the inner wall of one of such user's two cheeks and the cheek-adjacent side of such user's dental arches, gums and teeth."

That is, Applicant's specification explicitly defines a cheek pouch to include what generically are called "soft tissues." Applicant's Figure 3, drawing feature 50, illustrates the approximate location of a cheek pouch and shows that it is the soft tissues of a user's cheek pouch that impose the compressive forces on Applicant's anchor. Of course, Applicant is not claiming that the soft tissues of a user's mouth are part of the cheek pouch anchor, but only that these soft tissues are part of the cheek pouch environment in which the anchor as claimed is capable of operating.

Claims 33, 39, and 40 also contain variants on the claim limitation that the spring

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[1] Applicant's claim phrase "one or more of a user's cheek pouches" allows for the possibility that a cheek pouch anchor could be placed between a user's lips and gums forward of the front teeth, across the boundary between the user's two cheek pouches, and thus partially in one cheek pouch and partially in the other. The possibility that the anchor could be so placed does not alter Applicant's first, structural limitation that the anchor must be size-limited to be capable of fitting "within one of a user's cheek pouches" -- something that Leal's device cannot do.

element is structured to be placed within a user's cheek pouch and to compress as a user's jaws close and to maintain a bridge as a user's jaws open and close.

Plainly, Leal does not perform the identical function specified in Applicant's claims in substantially the same way and Leal does not produce substantially the same results as Applicant's cheek pouch anchor. MPEP 2184, II.(A), citing *Kemco Sales, Inc. v. Control Papers Co., 208 F.3d 1352, 54 USPQ2d 1308 (Fed. Cir. 2000).*

Applicant thus has proved that Leal is not equivalent to Applicant's anchor as claimed. MPEP 2184.

Material Misstatement of Applicant's Argument.

The Examiner misstates one of Applicant's arguments as follows:

> "In addition, Applicant argues that if the Leal device may be compressed it would be malfunctioning, however, the device needs to be compressed in order to be removed from the user's mouth after the procedure is done."

In fact, Applicant made the following distinctly different argument, supported by express citations to Leal's disclosure:

> "The 'resilient connection' 24 of the Leal device would have to be optimized by substantially weakening it to permit compression ***by soft tissues of a user's cheek pouch without causing pain or injury to the soft tissues***, but that would defeat the principal purpose of the Leal device to retain the patient's mouth open. Therefore, it is not necessarily true that a patient's soft tissues could compress the Leal device. The Leal device would be malfunctioning if a patient could close jaws to compress the Leal device, contrary to Leal's explicitly stated purpose to 'maintain the mouth open.' A characteristic that would appear only in a malfunctioning device is not an inherent characteristic. See MPEP 2112, subdivision IV."
>
> Request for Further Examination, p. 6.

Leal explicitly states that his device is designed to be compressed by the dentist's fingers, while repeatedly stating that the purpose of his device is "maintaining the patient's mouth in an open position" and "preventing the closing of the patient's mouth." Leal, 1:6-8; 3:5-22; and claim 1 at 6:30-34. Leal functions in a different manner to achieve a different result than does Applicant's anchor as claimed.

Compression of Leal's device by a dentist's fingers on Leal's tabs 32 and 34 is not

equivalent to compression of Applicant's anchor by the tissues of a user's cheek pouch. MPEP 2184, II.(A), citing *Kemco Sales, Inc. v. Control Papers Co., 208 F.3d 1352, 54 USPQ2d 1308 (Fed. Cir. 2000).* Leal performs the compression function differently.

The Examiner improperly avoids the essence of Applicant's argument by presuming, incorrectly, that when Leal's device is properly functioning a patient could bring the hard biting surfaces of the patient's teeth to bear on Leal's tabs 32 and 34 to use the patient's jaw muscles to close the patient's mouth and compress Leal's device, contrary to Leal's explicitly stated purpose.

Even if a patient could compress Leal's tabs 32 and 34 with the biting surfaces of a patient's teeth (which a patient cannot do), still compression of Leal's tabs 32 and 34 with the greater power of a the biting surfaces of a patient's teeth is not equivalent to compression of Applicant's anchor with the lesser power of the soft tissues of a user's cheek pocket. *MPEP 2184, II,* citing *Pennwalt Corp. v. Durand-Wayland, Inc. 833 F.2d 931, 4 USPQ2d 1737 (Fed. Cir. 1987), cert. denied, 484 U.S. 961 (1988).*

Nowhere does Leal state that his device can be compressed by the patient's mouth. Therefore, the Examiner must bear the burden of showing that a properly functioning Leal device inherently is compressible by a patient's mouth if Leal is to serve as an equivalent in the prior art, either for purposes of anticipation or in a showing of obviousness.

Applicant's claimed anchor cannot hold a patient's mouth open, as Leal's device does, because Applicant's anchor is structurally limited to be compressible by the tissues of a user's cheek pocket. Because Leal states that his device is structured to hold a patient's mouth open and prevent it from closing, it follows as a matter of common sense that Leal's device cannot be structured to permit compression of Leal by the tissues of a user's cheek pocket. Leal's device and Applicant's claimed anchor are designed to reach different results and therefore they are not equivalents.

There Is Insufficient Foundation In Leal's Specification and Figures For The Examiner's Assertion That Leal's Whole Wire Remains Resilient After Leal Attaches Various Other Elements to That Wire.

The Examiner is correct that Leal's device is formed of metallic wire. Leal, 1:50 - 2:19; 3:67-68; 4:1-8. However, it is common knowledge that resilience is not solely a function of the kind of material, but rather shape and structure also affect resilience.

Here, even if one were to speculate (as the Examiner does) that the raw material of Leal's wire was uniformly resilient prior to fabrication of Leal's device, still one of ordinary skill would expect from common knowledge that resilience of the wire in Leal's upper section 12 and lower section 14 would be materially reduced by the various elements that Leal affixes to that wire, including forward tabs 32 and 34, the tongue depressor 26, and cotton clamps 38. See Leal Figs. 1, 2, 4 and 5. At the very least, Leal's attachments would tend to cause discontinuities in the resilience of Leal's fabricated whole device.

The Examiner Speculates About a Motivation To Adjust Leal to Accommodate Patient Deformities.

The Examiner states:

> "Applicant argues that the [Leal] device could not be adjusted by bending of the wires to expand loop size to affect the total span size of the device because it would create and A-symmetrical device and the device is not all made of the resilient material. However, the device is a continuous piece of material, therefore it is all made of the same material. Moreover, an A-symmetrical device may be needed for user's having an over-bite or some other affliction that would cause there mouth to be A-symmetrical." Office Action, Nov. 9, 2007, p. 3.

Applicant did not and does not argue that the Leal device "could not be adjusted by bending the wires." Rather, Applicant argues that Leal does not teach the specific kind of adjustability that Applicant discloses and claims wherein:

> "an adjustment in said range of expansion and compression of the loop span size of at least one of said plurality of connected loops [will translate] ***into an adjustment in said range of expansion and compression of said whole spring element span size."*** Claim 39, last phrase. See also, Claim 36.

Contrary to the Examiner's assertion, the kind of adjustability claimed by Applicant is not objectively disclosed in Leal. Applicant's claimed kind of adjustability is neither ***necessarily*** nor reliably present in Leal's device. The Examiner is imputing the claimed adjustability to Leal's device by improper use of hindsight in light of the teaching of Applicant's disclosure. Request for Further Examination, pp. 7 -10.

The Examiner's Hypothetical Motivation to Adjust Leal to Accommodate Patient Deformities Does Not By Itself Lead to Applicant's Particular Type of Adjustability And Such An Hypothesis Does Not Qualify As Prior Art.

The Examiner does not show how a person of ordinary skill in the art having common sense would have made an operable modification of Leal's device that would have rendered Leal's device adjustable equivalently to the adjustability claimed for Applicant's anchor. Instead, the Examiner factually misstates the manner in which Leal's device operates as disclosed by Leal.

The showing the Examiner must make to demonstrate prima facie equivalence cannot be made merely by hypothesizing that one of ordinary skill would have a motivation to adjust Leal' device for a patient's over-bite or other affliction. The Examiner must go further and articulate some publication or convention in the prior art that would reliably lead one of ordinary skill to a mechanically operable modification of Leal's device so Leal would perform substantially the same function in the same manner with the same result as Applicant discloses and claims. *MPEP 2184, II,* citing *Pennwalt Corp. v. Durand-Wayland, Inc. 833 F.2d 931, 4 USPQ2d 1737 (Fed. Cir. 1987), cert. denied, 484 U.S. 961 (1988).*

First. The obvious, direct, simple method to adjust the "range of expansion and contraction of the whole spring element span size" of Leal's device 10 would be to change the angle of curvature at Leal's resilient connection 24. With such an obvious, simple method of changing the range of expansion and contraction of Leal's whole spring element span size, one of ordinary skill in the art having common sense would have no motive to adjust Leal's whole spring element span size by the complicated, indirect method of adjusting the span size of Leal's upper section 12 and conversely adjusting the span size of lower section 14.

Second. If a modification of the span size of Leal's upper section 12 did translate into a converse modification of the span size of lower section 14 (or vice versa), then that modification would tend to also cause a cascade of changes in the relative locations of Leal's resilient connection 24, affixed tongue depressor 26, cotton clamps 38 and forward tabs 32 and 34. See Leal Figs. 1, 2, 4 and 5. This cascade of changes would threaten the quality of the fit of Leal's device in the patient's mouth in a variety of ways. Thus, there would be a strong motivation for one of ordinary skill having common sense to avoid the cascade of changes that would be caused by conversely adjusting the span sizes of Leal's

sections 12 and 14. Instead, one of ordinary skill having common sense would make the simplest adjustment confined within Leal's section 12 or section 14 that would accommodate a patient's particular deformity.

Third. If an adjustment motivated by an intention to accommodate an over-bite did incidentally have a tendency to alter the range of expansion and contraction of Leal's whole device 10, then there would be a motivation to adjust in a way that did not materially alter the range of expansion and contraction of Leal's whole device 10 because that would threaten to change the fit and comfort of the whole device.

Fourth. A motivation to adjust to accommodate a patient's over-bite or other affliction is not equivalent to a specific motivation to alter the "range of expansion and contraction of the whole spring element span size" of Leal's device 10. To the contrary, the motivation would be to adjust only those precise features needed to accommodate the patient's particular deformity, while not compromising the intended function of Leal's device. It is common sense that an over-bite deformity does not necessarily alter the maximum span of a patient's jaw opening, so an over-bite would not necessarily lead one of ordinary skill to modify the range of expansion and contraction of Leal's whole device 10.

Fifth. Leal's wire could be bent in a variety of ways to accommodate an over-bite or other deformity without such bending translating into "an adjustment in the range of expansion and contraction of the whole spring element span size" of Leal's device 10. For example, one could spread the U-shape of Leal's lower section 14 to adjust entirely within section 14 for a patient's deformity without any effect upon upper section 12, and vice versa. Indeed, one could reshape both of Leal's upper section 12 and lower section 14 in a variety of ways without altering Leal's connection 24.

Sixth. It is highly speculative what particular bending would have been induced in one of ordinary skill in the art by the Examiner's hypothetical motivation to adjust for patient deformities. One can envision bending the wire in Leal's device in a variety of ways to accommodate various deformities in a patient's mouth. However, most bending to accommodate a particular patient's deformity would not be a converse adjustment of Leal's sections 12 and 14 that would translate into an adjustment in the range of expansion and compression of Leal's whole spring element 10.

Seventh. The Examiner cites no art and makes no other showing that the intended

fit of Leal's device is so sensitive to over-bite or other affliction that a motivation to modify the Leal device would be induced in one of ordinary skill. Leal's device fits between gums and lips, outside the bone and teeth of the dental arches, where the patient's soft tissues and jaw muscles have the potential to absorb deviation in the patient's dental arches. Thus, the Examiner's hypothetical motivation of modify Leal is speculative.

Eighth. The Examiner does not show how bending of Leal's wire by one of ordinary skill to accommodate a particular patient's deformity would ***necessarily*** (or even reliably) achieve the specific kind of adjustability that is disclosed and claimed by Applicant: Applicant claims an adjustment in the range of expansion and compression of the loop span size of at least one of a plurality of connected loops that translates into an adjustment of the range of expansion and compression of the whole spring element span size. Possible unintended, incidental effects of wire bending that hypothetically might have been induced by a hypothetical motivation to adjust for patient deformities, do not qualify as prior art.

Ninth. When the Examiner speculates that adjustment of Leal's whole spring element span size might have occurred as an unintended, incidental effect of bending to accommodate a patient over-bite, the Examiner fails to show that one of ordinary skill in the art having common sense would have perceived and recognized a special value to such an incidental adjustment of whole spring element span size that arose by converse adjustment of the span sizes of Leal's sections 12 and 14. It is likely that such an incidental adjustment of Leal's whole spring element span size would have been seen by one of ordinary skill as an adverse effect to be avoided or counter-adjusted. That is not a showing of prior art.

Tenth. The foregoing items first through ninth create a strong inference that the Examiner improperly is reading the teaching of Applicant's invention into Leal by use of hindsight.

The hypothetical motivation to bend Leal's wire to accommodate a patient's over-bite is not sufficient, without more, to show that the particular kind of adjustability claimed by Applicant in claims 36 and 39 is inherent in Leal or was conventional in the art. For the same reason, the hypothetical motivation, without more, does not show how Applicant's particular kind of adjustability would have been obvious -- absent the teaching of Applicant's specification.

One Mode Of Adjusting Leal Suggested By The Examiner Lacks Sufficient Particulars to Demonstrate That It Would In Fact Be Operable And It Contradicts A Limitation of Applicant's Claim 36.

The Examiner states,

"Also, to prevent the A-symmetry the loops on the top and bottom portions [of Leal's device] could be adjusted equally to maintain symmetry." Office Action, Nov. 9, 2007, p. 3.

An equal adjustment "to maintain symmetry" would be inconsistent with the following explicit limitation in Applicant's claim 36:

"...such that an increase or decrease in the loop span size of any one of said plurality of loops results in a ***converse*** decrease or increase in the loop span size of at least one other of said plurality of loops ...."

The Examiner's suggestion lacks sufficient detail to be operable. How, precisely, would the Examiner's equal adjustment "to maintain symmetry" be made when starting with the device that Leal describes as "two semi-elliptical portions" formed by folding or bending about the minor axis of the ellipse?" Leal, 4:2-9. What prior art or convention would suggest to one of ordinary skill in the art such an "equal adjustment to maintain symmetry" of Leal's device?

SUMMARY

Applicant respectfully submits that the rejections of claims 33-43 should be withdrawn and those claims should be allowed.

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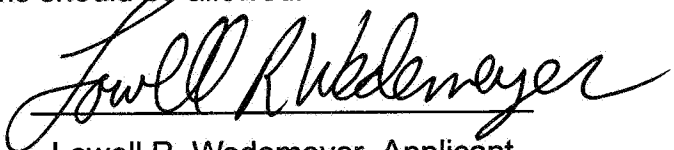

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